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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

GINA JAEGER, individually, AND AS
PERSONAL REPRESENTATIVE OF THE
ESTATE OF HER SISTER CHARLENE
HILL,

Plaintiff,

vs.

WILLIAM POWELL, DANA WADDELL,
AMBER DAYHUFF, PEAK MEDICAL
MONTANA OPERATIONS, LLC AND
GENESIS HEALTHCARE, INC.,

Defendants.

CV-16-30-BU-SEH

**AMENDED COMPLAINT /
DEMAND FOR
JURY TRIAL**

Allegations as to Citizenship:

1. Gina Jaeger is a citizen of the State of Montana and resident of

Lewistown, Montana. The estate of Charlene Hill is being probated in Montana and for diversity purposes, the estate is a citizen of Montana.

2. William Powell is a citizen of Montana and resides in Butte, Montana.
3. Dana Waddell is a citizen of Montana and resides in Butte, Montana.
4. Amber Dayhuff is a Montana citizen and resides in Butte, Montana.
5. Peak Medical Montana Operations, LLC is a limited liability company organized in the State of Delaware and is a citizen of the State of Delaware.
6. Genesis Healthcare, Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business in California. Its' headquarters are located in the State of Pennsylvania and thus Genesis Healthcare, Inc. is a citizen of the State of Pennsylvania for diversity purposes.

General Allegations

1. Peak Medical Montana Operations, LLC operates a skilled nursing facility in Butte, Montana known as the Butte Center. This skilled

nursing facility is licensed by the State of Montana.

2. Charlene Hill was admitted to the Butte Center primarily for rehabilitative services on 8/13/2015.
3. At the time of this admission, Charlene Hill was 60 years old. She was a diabetic and weighed in excess of 330 lbs. She had a large abdominal fold and was incontinent. These conditions put Charlene Hill at increased risk for skin breakdown and resulting infections, including cellulitis and infected pressure sores.
4. On 8/25/2015, just 12 days after her admission, Charlene Hill was taken by ambulance to St. James Community Hospital in Butte, Montana. Upon arrival there, she was diagnosed with the following conditions:

1. Pneumonia
2. Two infected pressure sores
3. Cellulitis
4. Yeast Infection
5. Sepsis
6. Septic Shock

Charlene Hill did not have any of these adverse health conditions when she was admitted to the Butte Center on 8/13/2015.

5. On 8/25/2015, shortly after her admission to St. James Hospital, Charlene Hill suffered a cardiac event from which she never

regained consciousness. Charlene Hill died on 9/2/2015.

6. Charlene Hill's remains were autopsied by Jaime L. Oeberst, M.D., Montana's Chief Medical Examiner. Dr. Oeberst concluded that the cause of her death was septic shock from cellulitis.

Personal Liability Allegations Against William Powell. (Negligence)

7. William Powell was the director of the Butte Center in 2015. As the director of the Butte Center, Powell was responsible for providing proper medical equipment and supplies to Charlene Hill, including a wheelchair and recliner. However, the wheelchair and recliner provided for her use were too small and not sufficiently cushioned. Charlene Hill's use of these items contributed to the creation of open wounds and pressure sores on her legs creating sources for infections like cellulitis. William Powell was aware, or should have been aware, of the damages to Charlene Hill from the use of these items. Under existing state common and statutory law and relevant federal law and regulations, William Powell had a duty to provide proper equipment and supplies to Charlene Hill. William Powell breached this duty as set out above and Charlene Hill was injured as a result. William Powell's negligence was a cause of Charlene Hill's infections and subsequent death, and

Plaintiff has been damaged by defendant's negligence.

Personal liability allegations against Dana Waddell and Amber Dayhuff

(Negligence)

8. Dana Waddell was employed at the Butte Center as an LPN.

Amber Dayhuff was employed at the Butte Center as an RN. Both Waddell and Dayhuff were involved in the day to day care of Charlene Hill.

On 8/22/15, Dana Waddell observed open bleeding areas near Charlene Hill's abdomen. On 8/23/15, Dana Waddell noted that there was a very pungent yeast odor coming from Charlene Hill's body which indicates infection. On 8/24/15, Amber Dayhuff observed two large open and bleeding areas on back of Charlene Hill's legs and thighs that could not be properly bandaged. On 8/24/15, Dana Waddell observed that the skin on the back of Charlene Hill's thighs were broken and bloody.

None of these observations were reported to the nursing director or Charlene Hill's attending physician. Dana Waddell and Amber Dayhuff had common law, state and federal law duties to report these conditions to either the nursing director or attending physician. Dana Waddell and Amber Dayhuff breached these

duties by failing to make a report of these conditions. These failures to report caused Charlene Hill to develop cellulitis which ultimately led to her death and caused Plaintiff injury.

Vicarious Liability of Peak Medical Montana Operations, LLC

9. William Powell, Amber Dayhuff and Dana Waddell were employees of the Butte Center in 2015. Peak Medical Montana Operations, LLC operates the Butte Center and is vicariously liable for the negligence of Powell, Dayhuff and Waddell as set forth above.

Liability of Genesis Healthcare, Inc.

10. Peak Medical Montana Operations, LLC is a subsidiary of Genesis Healthcare, Inc. As the parent company, Genesis Healthcare, Inc. has an ownership interest in Peak Medical Montana Operations, LLC.

11. Genesis Healthcare, Inc. exerts such control over the operations of Peak Medical Montana Operations, LLC that Peak Medical Montana Operations, LLC is the mere agent or instrumentality of Genesis Healthcare, Inc.

The two entities have the same address, which happens to be the headquarters for Genesis Healthcare, Inc. The two entities operate

the same type of business – for profit nursing homes.

Genesis Healthcare, Inc. has copyrighted a code of conduct that governs the day to day operations of all of its subsidiaries that operate nursing homes, including the Butte Center.

This code of conduct applies to all aspects of nursing home operations, including patient care, billing, maintenance, patient records and all other facets of operation.

The code of conduct applies to all employees of all subsidiaries, so it governs the day to day conduct of the Butte Center employees.

It requires these employees to uphold the principles of Genesis Healthcare, Inc. The code of conduct governs reporting issues, professional standards, which include a provision that Genesis Healthcare, Inc. does not tolerate any type of abuse or neglect.

The code governs licensure of employees, disciplinary procedures and resolution of employee complaints.

The code specifies the type of patient care required and sets forth patient rights. The code sets forth the legal and regulatory standards that govern employee conduct and the proper maintenance of all financial records and has specific procedures regarding HIPPA compliance.

The use by Genesis Healthcare, Inc. of Peak Medical Montana Operations, LLC as its agent or instrumentality prevents Plaintiff from holding Genesis Healthcare, Inc. legally accountable for the action(s) or inaction(s) of the Butte Center employees responsible for the care of Charlene Hill. This constitutes bad faith in the corporate veil piercing context and makes Genesis Healthcare, Inc. jointly and severally liable with Peak Medical Montana Operations, LLC in this matter as its corporate identity, in equity, should be disregarded based upon the foregoing allegations.

Relief Requested

1. Compensation for all damages allowed under Montana law for wrongful death and survivorship claims;
2. For punitive damages as determined by the jury;
3. For Plaintiff's costs of suit;
4. For such other relief as the Court deems proper.
5. Plaintiff demands trial by jury.

DATED this 2nd day of August, 2016.

/s/ Torger Oaas
TORGER OAAS
Co-counsel for Plaintiff

/s/ William E. Berger
WILLIAM E. BERGER
Co-counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of August, 2016, a true copy of the foregoing was served on the following person(s) via Electronic Filing:

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By: /s/ Torger Oaas
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